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MESSRS ROLAND CHENG & CO v. ELIZABETH NG YUK LEE

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
LEONARD DAVID SHIM J
[SUIT NO: BKI-11A-1-1-2022]
2 AUGUST 2022

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Abstract – *Rules 27 and 28 of the Advocates (Practice and Etiquette) Rules 1988 ('Rules') are inapplicable in a situation where an advocate is a litigant and sues in person. The Rules are not meant to stifle the legal right of an advocate who is a party to act in person or through his law firm or to bar the advocate from being a witness when he is a party in the suit. The right to sue and defend in person is not only expressly provided in O. 5 r. 6 of the Rules of Court 2012, but also the advocate's constitutional right to appear for and on behalf of himself.*

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LEGAL PROFESSION: *Representation – Advocate – Right of advocate to represent himself and act as witness – Whether there would be infringement of Advocate (Practice and Etiquette) Rules 1988 – Right to sue and defend in person – Whether expressly provided in O. 5 r. 6 of Rules of Court 2012 – Whether rr. 27 and 28 of Advocate (Practice and Etiquette) Rules 1988 applicable – Whether could preclude advocate from acting for himself and/or his law firm in suit*

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This was an appeal against the decision of the Magistrate allowing the defendant's ('respondent') preliminary objection to preclude the plaintiff ('appellant'), a legal firm, from being represented by one Roland Cheng ('Mr Cheng'), a senior partner of the appellant. The respondent contended that the Advocates (Practice and Etiquette) Rules 1988 ('Rules') are the rules of or codes of conduct binding on members of the legal profession in the State of Sabah whether as a matter of contract or of statutory prescription. By continuing to appear and represent the appellant hereinafter, the respondent contended that the counsel in question may quite possibly infringe upon rr. 27(a) and 28(a) of the said Rules. It was the respondent's submission that the wordings of both rr. 27(a) and 28(a) are clear and unambiguous in its entirety and both rules are applicable in this civil suit. Mr Cheng, being a senior partner of the appellant, was at all material times an employee of the appellant and drawing his monthly salaries and other entitlements from the appellant as well. Essentially, his livelihood was directly connected with the appellant and, therefore, he had direct and pecuniary interest with the appellant. The appellant, however, submitted that the said r. 27 did not bar the appellant counsel from representing the appellant in the present circumstances since the appellant counsel was the key witness in the claim and was also the party in the claim. The appellant submitted that the said preliminary objection should have been dismissed because r. 27 did not

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disallow the appellant to act on behalf of himself. Therefore, the appellant submitted that the appeal should be allowed as the common law allowed the appellant, as solicitor, to act in person for himself in law. The issue for determination by this court was whether rr. 27 and 28 of the Rules was applicable to preclude Mr Cheng from representing the appellant in the Magistrates' Court suit.

Held (allowing appeal with costs; setting aside decision of Magistrate):

(1) Mr Cheng was the senior partner and proprietor of the law firm Ms Roland Cheng & Co. The law firm was the plaintiff and he was, for all intents and purposes, suing as a party through his law firm, which was permissible in law. Further, the right to sue and defend in person was not only expressly provided in O. 5 r. 6 of the Rules of Court 2012 but it was the appellant's constitutional right to appear for and on behalf of himself. As Mr Cheng was in effect, a *de facto* litigant representing himself in the Magistrates' Court Suit, rr. 27 and 28 was not applicable. (paras 18-20)

(2) Rules 27 and 28 of the Rules are inapplicable in a situation where an advocate is a litigant and sues in person. These Rules regulate the conduct and etiquette of an advocate when discharging his professional duty to his client and above all, as an officer of the court, an advocate is required to adhere to the highest standards of candour and professional etiquette towards the court. The Rules are not meant to stifle the legal right of an advocate who is a party to act in person or through his law firm or to bar the advocate from being a witness when he is a party in the suit. (para 22)

(3) The right of an advocate to represent himself and to be a witness is expressly recognised in r. 30(a) of the Rules which provides that 'An advocate who appears in person as a party or who is in the witness box shall not wear robes.' Thus, under r. 30(a), Mr Cheng could not wear robes if he appears as a litigant in open court. In the present case, Mr Cheng had elected to conduct his own case and was not appearing as counsel for another party. Hence, rr. 27 and 28 did not apply to the present case and did not preclude Mr Cheng from acting for himself and/or his law firm in the Magistrates' Court Suit. (para 23)

Case(s) referred to:

Dato' Chiong Sheng Fan v. Wong Hur Shiaw & Anor [2017] 1 LNS 490 HC ***(refd)***
Keow Seng & Co v. Trustees Of Leong San Tong Khoo Kongsi (Penang) Registered [1983] 1 LNS 18 FC ***(refd)***
Lee Kam Sun v. Ho Sau Lin & Anor [1999] 4 CLJ 507 HC ***(dist)***
Messrs Tai Choi Yu & Co Advocates v. Ting Sie Chung [2016] 1 LNS 1746 HC ***(refd)***
Messrs Thomas, Shankar Ram & Co Advocates v. Jeffery Law Siew Su & Ors [2010] 10 CLJ 350 HC ***(refd)***
Shahinuddin Sharif v. Mohd Amin Hasbollah [1998] 1 LNS 311 HC ***(refd)***
Wong Sin Chong & Anor v. Bhagwan Singh & Anor [1993] 4 CLJ 345 SC ***(dist)***

Legislation referred to:
Advocates (Practice & Etiquette) Rules 1988, rr. 27(a), 28(a), (1), 30(a)
Courts of Judicature Act 1964, s. 29
Rules of Court 2012, O. 5 r. 6

For the appellant - Roland Cheng; M/s Roland Cheng & Co
For the respondent - Korventt Wheezar E Jomiji; M/s Korventt & Song

[Editor's note: Appeal from Magistrate's Court; Suit No: BKI-A72-104-9-2020 (MC1)]

Reported by Suhainah Wahiduddin

JUDGMENT

Leonard David Shim J:

[1] This is an appeal against the decision of the learned Magistrate made on 28 January 2022 allowing the defendant's preliminary objection to preclude the appellant, a legal firm from being represented by Mr Roland Cheng, a senior partner of the appellant.

[2] As this appeal originates from the Subordinate Courts, pursuant to s. 29 of the Courts of Judicature Act 1964, the High Court shall approach this appeal by way of rehearing.

Brief Factual Background

[3] On 22 September 2021, the appellant filed a suit in the Magistrates Court against the respondent for, *inter alia*, alleged breach of an amended contract of employment. The respondent filed her defence and counter-claim and trial was set to commence on 18 December 2021.

[4] By a letter dated 9 December 2021 (encl. 64), the defendant's advocates gave a notice of preliminary objection to Mr Roland Cheng representing the appellant at the trial in the Magistrates Court. The letter dated 9 December 2021 reads as follows:

> We respectfully refer to the matter above wherein we act for the defendant, Ms. Elizabeth Ng.
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> As directed by the court, we hereby formally write to the court to raise our preliminary objection. In view of the fact that the plaintiff's Advocate is a senior partner and employed by the plaintiff, the said advocate may be breaching the provisions of Rules 27 and 28 of the Advocates (Practice and Etiquette) Rules 1988 if the said advocate should continue to represent the plaintiff in the trial. Therefore, we are objecting against the representation of the said advocate in the trial as it would be in breach of the said rules.
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> We would also like to apologise for the delay in raising this objection as we were under the assumption that the said advocate would be aware of the etiquette rules in the circumstances, and that he should not have

represented the plaintiff and thus, were caught off guard when the said advocate chose to do so in the trial on 9 December 2021. We plead for the court's understanding in this matter.

[5] After hearing submission from the parties, the preliminary objection was allowed by the learned Magistrate on 28 January 2022.

Contention Of The Parties

[6] The respondent contends that the Advocates (Practice and Etiquette) Rules 1988, are the rules of or codes of conduct binding on members of the legal profession in the State of Sabah whether as a matter of contract or of statutory prescription. It is a rule of morality having statutory force. Basically, it is a standard of conduct which advocates and solicitors have which are not in common with non-advocates and solicitors. By continuing to appear and represent the appellant hereinafter, the respondent contends that the counsel in question may quite possibly infringe upon rr. 27(a) and 28(a) of the said Rules. Rules 27 and 28 states as follows:

> 27. (a) An advocate shall not appear in any matter in which he is directly pecuniarily interested.
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> 28. (a) An Advocate shall not appear in court or in chambers in any case which he has reason to believe that he will be a witness in respect of material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardising his client's interests.
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> (b) An advocate shall not appear before an appellate tribunal if in the case under appeal he has been a witness on a material and disputed question of fact in the court below.

[7] The respondent contends that the wordings of both rr. 27(a) and 28(a) are clear and unambiguous in its entirety and both rules are applicable in this civil suit. Mr Roland Cheng, being a senior partner of the appellant is at all material times an employee of the appellant and drawing his monthly salaries and other entitlements from the appellant as well. Essentially, his livelihood is directly connected with the appellant and therefore he has direct and pecuniary interest with the appellant.

[8] The respondent relied on *Lee Kam Sun v. Ho Sau Lin & Anor* [1999] 4 CLJ 507; [1999] 2 MLRH 241, wherein His Lordship James Foong had this to say:

> It is a well-established principle that lawyers should not act as counsel and witnesses in the same proceedings. The reason, as expounded by Beaumont CJ in *Emperor v. Dadu Ramu* AIR [1939] Bom 150, is: "An advocate cannot cross-examine himself, nor can he usefully address the court as to the credibility of his own testimony, and a court may feel that justice will not be done if the advocate continues to appear".

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> Further on, ... The firm of CTS was the retainer and as duly considered by Justice Malik Ishak in *Syarikat Pengangkutan* case, the proximity and relationship of partners and legal assistants in the same firm is too close for comfort that a conflict of interest will not be practiced. As a reminder, it is ingrained in our legal system that: Justice must not only be done but must also be seen to be done ...

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[9] Further the respondent referred to the case of *Wong Sin Chong & Anor v. Bhagwan Singh & Anor* [1993] 4 CLJ 345; [1993] 1 MLRA 521, the Supreme Court held as follows:

> Generally speaking, however, the duty of a solicitor to do justice, if he is a material witness to a case, is of greater paramount than his duty to represent a client. In our opinion, that duty is the rationale behind Rule 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978 ...
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> Further on, "The right of a party to the attendance of witnesses is a crucial part of our judicial system, but the right must be protected against any oppression or abuse ..."

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[10] The appellant submits that the application of said r. 27 of the said Rules had been discussed in the Kuching High Court case of *Messrs Thomas, Shankar Ram & Co Advocates v. Jeffery Law Siew Su & Ors* [2010] 10 CLJ 350; [2009] MLJU 1536 ("said *TSR* case"), where the plaintiff is a legal firm comprising of two partners namely Mr Shankar Ram and Mr Francis Teron Kadap. They have filed an originating summons action for leave to discharge themselves as counsel and enforce their retainer. The defendants then filed a summons in chambers for an order to disqualify both Mr Thomas Shankar Ram and Mr Francis Teron Kadap from appearing as counsel for their firm citing contravention of r. 28(1) of the Sarawak equivalent of the Sabah Advocates (Practice & Etiquette) Rules 1988.

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[11] In dismissing the defendants' summons, Her Ladyship Rhodzariah Bujang, JC (as she then was) after hearing arguments allowed the counsel to act in person and held as follows:

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> The nature of the plaintiff's claim in this case is such that the partners themselves need to depose the affidavits as this action concerns matters pertaining to their rights and duties as counsels in the suit action and the related appeals and the 10 analogy drawn by Mr. Shankar Ram with respect to a lay person acting for himself is, in my view, appropriately made ...

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> It is clear in this case that Mr. Shankar Ram and Mr. Francis Teron had elected to conduct their own case and were not meddling with the duties of an appointed counsel. When appearing in person and if this case goes to open court, the advice given in the cited case is that Mr. Shankar Ram and Mr. Francis Teron must not be robed.

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> However, on the legal considerations I gave earlier, I dismiss the application of the defendants with cost to be taxed unless agreed. If not agreed, getting-up is capped at RM4,000.00.

By reason thereof, the appellant submits that the said r. 27 does not bar the appellant's counsel from representing the appellant in the present circumstances since the appellant's counsel is the key witness in the claim and is also the party in the claim. The appellant submits that the said PO should have been dismissed because r. 27 does not disallow the appellant to act on behalf of himself.

[12] The appellant referred to the High Court case of *Shahinuddin Sharif v. Mohd Amin Hasbollah* [1998] 1 LNS 311; [1998] 3 MLJ 693, where the defendant had raised a preliminary objection that the plaintiff did not have a valid practising certificate; it was argued that the law firm of Messrs Shahinuddin & Ranjit did not exist at those material time and consequently all orders granted by the court were said to be null and void.

[13] However, in dismissing the preliminary objection His Lordship Abdul Malik Ishak J (as he then was) held as follows:

> (1) There was no legal impediment for the plaintiff to sue in his capacity as an ordinary citizen and that was precisely what he was doing. As an advocate and solicitor, the plaintiff can certainly act for himself but the moment he acts for someone else, he must have a practising certificate. This is the test that one must apply. All affidavits were affirmed and deposed by the plaintiff in his personal capacity and not in his capacity as an advocate and solicitor;
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> (3) For all intents and purposes, the law firm of Messrs Shahinuddin & Ranjit refers to no one else but the plaintiff. It is the plaintiff and he is suing as a party, which was permissible by law, through his own law firm, which in law is himself.

Therefore, the appellant submits that the appeal should be allowed as the common law allows the appellant, as solicitor, to act in person for himself in law.

[14] The appellant further referred to the Federal Court case of *Keow Seng & Co v. Trustees Of Leong San Tong Khoo Kongsi (Penang) Registered* [1983] 1 LNS 18; [1983] 2 MLJ 103, where the question of importance in that appeal is whether a notice to quit addressed to a firm and not the individual partners who make up the firm is good in law. His Lordship Raja Azlan Shah LP (as His Majesty then was) observed the law on firm's name at p. 105 that:

> ... The firm name is not in itself the name of any person other than the 20 partners because in the words of Farewell L.J. in *Sadler v Whiteman* [1910] 1 KB 868 889:
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> > The fallacy is to say that a partner in a firm does not, but the firm does, carry on business. In English law a firm as such has no existence; partners carry on business both as principals and as

A agents for each other within the scope of the 25 partnership business; the firm name is a mere expression; the firm name is a mere expression, not a legal entity, although for convenience under Order XLVIII. A it may be used for the sake of suing and being sued.

B **[15]** Similarly in this case, since the appellant is suing in the firm's name to file suit, the appellant submits that he is actually suing for himself under the common law right to act in person as he is also a qualified advocate and solicitor. Therefore, there is no merits in the said PO that an advocate cannot act for himself in suing on behalf of the firm and must necessarily appoint C another counsel to act for him.

[16] The appellant submits that the same common law issue of counsel representing himself on behalf of his firm was considered in Miri High Court case of *Messrs Tai Choi Yu & Co Advocates v. Ting Sie Chung* [2016] 1 LNS 1746; [2016] MLJU 1553 ("said *Tai* case"). In that case, the defendant D argued that the plaintiff has personal and pecuniary interest in the outcome of the defendant's counterclaim, and that he would be a witness for the plaintiff being the sole proprietor of the plaintiff. His Lordship Alwi Hj Abdul Wahab JC (as he then was), dismissed the objection and held that:

> It is also my view that Mr Tai has the absolute right to sue and to defend E by acting in person just as every other person to act in person to sue or to defend in any legal proceedings in court. The right to sue and to defend in person is allowed in civil case as provided under Order 5 r 6 of the Rules of Court 2012. In the instant case, Mr. Tai was acting for his own legal firm ever since this action was filed in the High Court and also during the appeal. There was no application made to discharge him F until the so-called defamatory remark which I have concluded to be a mere submission in another application for the court's considerations.

Evaluation And Findings

[17] After perusing the record of appeal and the submissions filed by both G parties, the only issue for determination by this court in this appeal is whether rr. 27 and 28 of the Advocates (Practice and Etiquette) Rules 1988 (the 1988 Rules) is applicable to preclude Mr Roland Cheng from representing the appellant/plaintiff in Magistrates Court Suit No. BKI-A72-104-9-2020 (the Magistrates Court Suit). In essence, this issue is a question of law involving the construction of rr. 27 and 28 of the 1988 Rules. H

[18] In the present appeal, Mr Roland Cheng is the senior partner and proprietor of the law firm of Ms Roland Cheng & Co. The law firm is the plaintiff and he is for all intents and purposes suing as a party through his law firm, which is permissible in law. In *Shahinuddin Shariff v. Mohd Amin Hasbollah* [1998] 1 LNS 311; [1998] 3 MLJ 693, Abdul Malik Ishak J I (as His Lordship then was) held:

(1) *There was no legal impediment for the plaintiff to sue in his capacity as an ordinary citizen and that was precisely what he was doing. As an advocate and solicitor, the plaintiff can certainly act for himself* but the moment he acts for someone else, he must have a practising certificate. This is the test that one must apply. All affidavits were affirmed and deposed by the plaintiff in his personal capacity and not in his capacity as an advocate and solicitor.

(3) *For all intents and purposes, the law firm of Messrs Shahinuddin & Ranjit refers to no one else but the plaintiff. It is the plaintiff and he is suing as a party, which was permissible by law, through his own law firm, which in law is himself.*

(emphasis added)

[19] Further, the right to sue and defend in person is not only expressly provided in O. 5 r. 6 ROC 2012 but it is the appellant's constitutional right to appear for and on behalf of himself. In *Messrs Tai Choi Yu & Co Advocates v. Ting Sie Chung* [2016] 1 LNS 1746, the High Court per Alwi Hj Abdul Wahab JC (as His Lordship then was) held:

It is also my view *that Mr. Tai who is professionally trained as lawyer could represent himself or his firm in defending this counterclaim action by the defendant. It is his constitutional right to appear for and on behalf of himself and the court is in no position to stop him from appearing and acting for the plaintiff* unless there are solid evidence before this court to support the defendant's contention in so far as Mr. Tai's conduct and behaviour are concerned which can be construed as damaging to the defendant's case.

It is also my view that *Mr. Tai has the absolute right to sue and to defend by acting in person just as every other person to act in person to sue or to defend in any legal proceedings in court. The right to sue and to defend in person is allowed in civil case as provided under Order 5 r. 6 of the Rules of Court 2012*. In the instant case, Mr. Tai was acting for his own legal firm ever since this action was filed in the High Court and also during the appeal. There was no application made to discharge him until the so-called defamatory remark which I have concluded to be a mere submission in another application for the court's considerations.

In Shahinuddin Shariff v. Mohd Amin Hasbollah, Abdul Malik Ishak J (as he then was) held that "there was no legal impediment for the plaintiff to sue in his capacity as an ordinary citizen and that was precisely what he was doing. As an advocate and solicitor, the plaintiff can certainly act for himself ..." .

(emphasis added)

[20] As Mr Roland Cheng is in effect, a *de facto* litigant representing himself in the Magistrates Court Suit, rr. 27 and 28 is not applicable. In *Messrs Thomas, Shankar Ram & Co Advocates v. Jeffery Law Siew Su & Ors* [2010] 10 CLJ 350; [2009] MLJU 1536, the High Court per Rhodzariah Bujang JC (as Her Ladyship then was) held:

Yet, there is a distinguishing feature in the cases cited by them which is so apparent in this case – it is that *the advocates here, being the only partners in the plaintiff firm, are themselves the de facto litigants unlike in the cited cases where they were acting for the litigants*.

The nature of the plaintiff's claim in this case is such that the partners themselves need to depose the affidavits as this action concerns matters pertaining to their rights and duties as counsels in the suit action and the related appeals and the analogy drawn by Mr. Shankar Ram with respect to a lay person acting for himself is, in my view, appropriately made. However, after some consideration I am of the view that r. 27(2) cited by Mr. Shankar Ram is not applicable to their case – that rule is specifically meant for a taxation proceeding where an advocate has presented his bill of cost to be taxed by the court and is not meant to cover just any case where cost is an issue or a subject matter of dispute. *However, I am certain that r. 27(1) which says that an advocate shall not appear in any matter in which he is directly pecuniarily interested refers to actions filed by others in which he is so related - not to one where he is sued or being sued in person (or as a partner of a firm as in this case). Similarly with r. 28(1).* It is also to prevent an advocate to act or to continue acting for his client if he knows that his possession of material and disputed facts is such that it will make him a potential witness in the case.

(emphasis added)

[21] A similar preliminary objection was raised in *Dato' Chiong Sheng Fan v. Wong Hur Shiaw & Anor* [2017] 1 LNS 490; [2017] MLJU 418, the High Court, per Lau Bee Lan J (as Her Ladyship then was) held:

[27] In respect of the PO, I find the same grounds were raised before the learned SCJ. The learned SCJ has considered the merits of the PO and this appears at paras. 18 to 27 of the Rekod Rayuan Tambahan (RRT).

27.1 I find the learned SCJ has not erred in dismissing the PO basically for the following reasons:

(a) The *1st respondent is a party or litigant to the Suit in person and gave evidence on behalf of the firm to which he is a partner. The 1st respondent did not act as "his own counsel"* nor "the 2nd defendant's counsel" (see para 22 of the SCJ's Grounds of Judgment (GJ).

(b) Rule 28 of the Legal Profession (Practice and Etiquette) Rules 1978 ('LPA (Practice and Etiquette) Rules') provides:

(a) An advocate and solicitor shall not appear in court or in chambers in any case in which he has reason to believe that he will be a witness in respect of a material and disputed question of fact, and if while appearing in a case it becomes apparent that he will be such a witness, he shall not continue to appear if he can retire without jeopardising his client's interests.

I agreed with the 1st respondent's submission that rule 28 LPA (Practice and Etiquette) Rules only applies to solicitors who, while acting for his client(s) has reason to believe that he will be a witness to the case.

(c) Rule 27 of the LPA (Practice and Etiquette) Rules provides

(a) An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested.

The learned SCJ deliberated on both these rules in paras 25 to 27 SCJ's GJ. In my judgment I find the learned SCJ did not err in following the reasoning of the learned JC (as she then was) in *Messrs Thomas, Shankar Ram & Co. Advocates v. Jeffery Law Siew Su & Ors* [2010] 10 CLJ 350 where the learned JC "*had distinguished between a situation where a counsel who has a conflict of interest in his client's case to a counsel who is himself a litigant*". Here I agreed with the view expressed by the learned JC (at para 8) in the passage quoted by the learned SCJ at para 26 as follows:

... [T]hat r. 27(1) which says that an advocate shall not appear in any matter in which he is directly pecuniarily interested refers to actions filed by others in which he is so related – not to one where he is sued or being sued in person (or as a partner of a firm as in this case).

... the learned SCJ did not err when she ruled 1st respondent "*Mr Wallace who has been sued as an individual may represent himself as well as Messrs Thomas Lai & Wallace Wong. Mr Wallace who is the partner of the 2nd defendant may act in person defending the suit not only for himself but also for the 2nd defendant as he is the de facto litigant in this case*. Therefore the plaintiff's counsel submissions that Mr. Wallace should be barred from representing himself and/or for the 2nd defendant and a judgment in default should be entered against the 2nd defendant in absence of its solicitor are devoid of merit".

(emphasis added)

[22] Applying the aforesaid authorities to the facts of the present appeal, r. 27 and r. 28 are inapplicable to a situation where an advocate is a litigant and sues in person. These Rules regulate the conduct and etiquette of an advocate when discharging his professional duty to his client and above all, as an officer of the court, an advocate is required to adhere to the highest standards of candour and professional etiquette towards the court. The 1988 Rules are not meant to stifle the legal right of an advocate who is a party to act in person or through his law firm or to bar the advocate from being a witness when he is a party in the suit.

[23] In fact, the right of an advocate to represent himself and to be a witness is expressly recognised in r. 30(a) of the 1988 Rules which provides that "An advocate who appears in person as a party or who is in the witness box shall not wear robes." Thus, under r. 30(a), Mr Roland Cheng could not wear robes if he appears as a litigant in open court. In the present case, Mr Roland Cheng has elected to conduct his own case and is not appearing as counsel

for another party. Hence, r. 27 and r. 28 does not apply to the present case and does not preclude Mr Roland Cheng from acting for himself and/or his law firm in the Magistrates Court Suit. Further, the right to sue in person is clearly and expressly provided for in O. 5 r. 6 ROC 2012.

[24] The court decisions in *Lee Kam Sun* and *Wong Sin Chong* relied upon by the respondent does not involve the determination of the right of a plaintiff to appear in person and act for himself and are, therefore, distinguishable from the facts and circumstances of the present case.

[25] Although Mr Cheng has the right to act for and on behalf of himself and/or the appellant at the trial, he runs the risk of his credibility being challenged under cross-examination without the benefit of a proper reply or re-examination and could not usefully and objectively submit to the court on the credibility of his own evidence given as a witness and party to the suit.

[26] Based on the aforesaid reasons, the decision of the learned Magistrate is set aside and the appeal is allowed with costs in the cause of the action in the Magistrates' Court suit.